

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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| IN RE: |) | |
| |) | |
| TRUE COLOURS, INC. |) | |
| |) | |
| Debtor. |) | Case No.20-10845-SAH |
| |) | Chapter 11 |
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| FIRST NATIONAL BANK & TRUST |) | |
| COMPANY WEATHERFORD, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Adversary No. 20-01048 |
| |) | |
| TRUE COLOURS, INC., an Oklahoma |) | |
| corporation; and RCB Bank, an |) | |
| Oklahoma banking corporation, |) | |
| Debtor. |) | |
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**MOTION FOR COURT APPROVAL OF SETTLEMENT
AND NOTICE AND OPPORTUNITY FOR HEARING**

COMES NOW, the Plaintiff, First National Bank & Trust Company, Weatherford, Oklahoma, ("First National Bank Weatherford") in the above styled adversary proceeding, and hereby moves this Court to approve a settlement reached by First National Bank Weatherford and the debtor, True Colours, Inc. in the adversary proceeding. In support of this Motion, First National Bank Weatherford shows this Court as follows:

1. First National Bank Weatherford filed its Complaint in the above styled adversary proceeding on June 25, 2020. First National Bank Weatherford filed its Amended Complaint on July 1, 2020, to correct deficiencies in the original Complaint.
2. In the Amended Adversary Complaint, First National Bank alleged that the

debtor, True Colours, Inc. obtained its loan in December, 2019, by making several fraudulent statements to First National Bank Weatherford, including but not limited to the following:

- (a) The Debtor, through its President, Brian Hobbs, represented that the purpose of the loans obtained by Debtor from First National Bank Weatherford in December, 2019, was to pay off loans which were owed by Debtor to RCB Bank, Stillwater.
- (b) Many times during the loan process Brian Hobbs, as President of the Debtor, informed First National Bank Weatherford that the Debtor was getting everything paid off at RCB Bank, and that, starting in 2020, all of the Debtor's loans and accounts would be consolidated at First National Bank Weatherford.
- (c) The payoff letter from RCB Bank was obtained by Brian Hobbs, and not by First National Bank Weatherford's personnel. Because Mr. Hobbs obtained the payoff letter, (and unknown to First National Bank Weatherford), the payoff letter from RCB Bank only represents the payoff of one loan owed by Debtor to RCB Bank, when First National Bank Weatherford intended to pay off ALL loans owed by Debtor to RCB Bank.
- (d) The RCB Bank payoff letter obtained by Brian Hobbs and given to First National Bank Weatherford contained the statement, "Upon receiving the correct payoff, all RCB liens will be released." (emphasis added). Because of this statement contained in the payoff letter, First National Bank Weatherford believed that its security interest in the inventory, accounts, equipment and general intangibles would have first priority in such collateral, because First National Bank Weatherford believed that all loans owed to RCB Bank by Debtor would be paid in full.
- (e) Prior to funding the loans to Debtor, First National Bank Weatherford required

Debtor to fill out and submit a "Borrowing Base Certificate" showing the dollar value of the collateral which secured the debt owed to First National Bank Weatherford. In the Borrowing Base Certificate, the Debtor represented that inventory in the amount of \$560,000.00 secured the debt owed to First National Bank Weatherford. Moreover, there is no mention in the Borrowing Base Certificate of any other debt which has priority over First National Bank Weatherford's security interest in the inventory.

(f) As part of the loan transaction to the Debtor, First National Bank obtained a personal financial statement from Brian Hobbs, the president and sole shareholder of the Debtor, because Brian Hobbs agreed to provide personal guaranties for the Loans made by First National Bank Weatherford to the Debtor. Even though Brian Hobbs had personally guaranteed the debt owed to RCB Bank by the Debtor, Mr. Hobbs did not list any of the RCB Bank debt (which he personally guaranteed) on the personal financial statement which he submitted to First National Bank Weatherford at the time the Loans were made to the Debtor.

(g) The Debtor provided additional documents to First National Bank Weatherford constituting assets lists, which included valuations of the assets held by the Debtor. When these assets lists were delivered to First National Bank Weatherford by Brian Hobbs, Mr. Hobbs did NOT inform First National Bank Weatherford that, even after the Loans were made, RCB Bank would hold a security interest in these assets to secure a loan in excess of \$250,000.00. Instead, Mr. Hobbs lead First National Bank Weatherford to believe that it would hold a first priority security interest in all of the inventory of the Debtor.

(h) After First National Bank Weatherford partially funded the Loans to Debtor,

the Debtor set up overdraft protection on its operating account at First National Bank Weatherford. In February, 2020, Debtor, through its President and sole stockholder, Brian Hobbs, filled out a credit application to set up the overdraft protection on Debtor's operating account maintained by Debtor at First National Bank Weatherford. In the Application, the Debtor failed to list any debt owed by Debtor to RCB Bank.

3. Because of the pattern of fraud which First National Bank Weatherford has alleged against the Debtor, in the Amended Adversary Complaint First National Bank Weatherford requests that this Court determine that the debt owed to First National Bank Weatherford by the Debtor is determined to be non-dischargeable. Further, First National Bank Weatherford has requested that this Court, as a court of equity, rescind the loan transaction between First National Bank Weatherford and the Debtor, and reinstate the debt owed by Debtor to RCB Bank, which was paid off from the proceeds of the loans made by First National Bank Weatherford to the Debtor.

4. The Debtor has denied that it practiced any fraud upon First National Bank Weatherford in obtaining its loans from First National Bank Weatherford, and has requested that any relief to First National Bank Weatherford be denied by this Court.

5. Now, in order to avoid the uncertainties of trial, and the time and cost of litigation, First National Bank Weatherford and the Debtor, True Colours, Inc., have agreed to a settlement whereby the Debtor will concede that the debt owed by the Debtor to First National Bank Weatherford is determined to be non-dischargeable, and further, that this debt will be paid in full by Debtor over the life of the Amended Plan of Reorganization as filed with this Court by the Debtor on July 6, 2020.

6. First National Bank Weatherford will abandon its claim that the loan

transaction between First National Bank Weatherford and the Debtor be rescinded, so that the loan amount owed to First National Bank Weatherford by Debtor, in the amount of \$345,826.92, shall remain due and owing to First National Bank Weatherford by Debtor.

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this document carefully and consult your attorney about your rights and effect of this document. If you do not want the Court to sustain the Motion for Court Approval of Settlement, or you wish to have your views considered, you must file a written response to the Motion for Court Approval of Settlement with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, Oklahoma, 73102 no later than 14 days from the date of filing of the Motion for Court Approval of Settlement therein. You should also serve a file stamped copy of the response to the undersigned (and others who are required to be served) and file a certificate of service with the Court. If no response is timely filed, the Court may sustain the Motion to Lift Stay and Abandon Real Property and strike the scheduled hearing without further notice.

The 14 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

WHEREFORE, PREMISES CONSIDERED, creditor, First National Bank Weatherford respectfully prays that this Court approve the settlement reached by the parties as outlined above, and further, First National Bank Weatherford respectfully prays that this Court enter the Agreed Order which is attached hereto as Exhibit "A", and that after entry of the Agreed Order, this Court dismiss the above styled adversary proceeding as being settled and therefore moot.

First National Bank Weatherford requests such additional relief, at law or in equity, which this Court believes First National Bank Weatherford is entitled to receive.

Respectfully submitted,

Houston, Osborn, Sexton & Thomas, PLLC

/s/ Micah D. Sexton

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CERTIFICATE OF SERVICE

This is to certify that a true and correct photostatic copy of the above and foregoing document was mailed by first class mail, postage prepaid, this 6th day of August, 2020, to all persons listed on the bankruptcy matrix in the above styled case, including the following:

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All other parties listed on the attached bankruptcy matrix

/s/ Micah D. Sexton
Micah D. Sexton

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AGREED ORDER APPROVING SETTLEMENT

COMES NOW, the Court, for consideration of the Motion for Court Approval of Settlement filed by First National Bank & Trust Company, Weatherford. First National Bank Weatherford advises the Court that on August 6, 2020, First National Bank

EXHIBIT A

Weatherford filed its Motion for Court Approval of Settlement. The Motion for Court Approval of Settlement was mailed to all parties in interest pursuant to Local Rule 9007 on August 6, 2020. The time to object to such motion has expired and no objections were filed.

Based upon the representations of Counsel for First National Bank Weatherford and for good cause shown the Court grants the Motion for Court Approval of Settlement (the "Motion") filed herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion for Court Approval of Settlement is granted, and the Settlement reached by First National Bank Weatherford and the Debtor, as outlined in the Motion, is hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the debt owed to First National Bank & Trust Company, Weatherford, by the Debtor, True Colours, Inc. on promissory note #5552582 and promissory note #5552563, in the amount of \$345,826.92, is determined by this Court to be non-dischargeable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the debt owed to First National Bank & Trust Company, Weatherford, by the Debtor, True Colours, Inc. as set forth in the preceding paragraph, shall be paid over a 5 year period, as provided in the Amended Plan of Reorganization filed by the Debtor on July 7, 2020, in the above numbered bankruptcy case.

Findings of fact based upon the representation of counsel. [Local rule 9013(I)(1)&(3)]

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Approved:

/s/ Gary D. Hammond

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